

Opinion No. 2009-052

August 19, 2009

The Honorable Bobby L. Glover
State Senator
Post Office Box 1
Carlisle, Arkansas 72024-0001

Dear Senator Glover:

I am writing in response to your request for my opinion on the following question:

Do the price posting provisions within Section 3-5-107(B) of House Bill 1907 of 2009 [now Act 783] violate the anticompetitive provisions of the Sherman Antitrust Act?

RESPONSE

The law in question, Act 783 of 2009, requires those selling malt beverages to a wholesaler or distributor to list their prices with the Director of the Alcoholic Beverage Control Division.

Given the heated debate that has arisen over the law, it appears virtually inevitable that this office will be called upon to defend it in the near future. Since this opinion request was submitted, I have heard from numerous attorneys on both sides of the issue at hand. It is clear that the battle lines are drawn between sophisticated parties with competent legal counsel. All concerned have their own view of the legal nuances of this Act, the fine points of any challenge to be brought, and the defenses to be raised. As I would be bound to defend this Act of the legislature in the face of such challenges, I am reluctant to recite the arguments already known to the lawyers preparing for litigation. Rather, this office has a practice of declining to opine on matters that are the subject of current or impending litigation. *See* Op. Att’y Gen. 2003-294. As my predecessor in office stated in Opinion 2002-031: “[I]n order to avoid encroaching upon exclusively

The Honorable Bobby L. Glover
State Senator
Opinion No. 2009-052
Page 2

judicial prerogatives, it has long been the policy of this executive-branch office to avoid rendering opinions on matters that are either pending or appear inevitably bound to be submitted to the courts for resolution.”

Therefore, please understand that I must decline to offer an opinion on this Act and its compatibility with the Sherman Antitrust Act.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM /cyh